



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Williams

**Respondent:** Blackpool Laundry Company Limited

**HELD AT:** Manchester (by CVP) **ON:** 12 May 2022

**BEFORE:** Employment Judge Peck (sitting alone)

**REPRESENTATION:**

**Claimant:** Did not attend

**Respondent:** Miss L Quigley (Counsel)

**JUDGMENT** having been sent to the parties on 16<sup>th</sup> May 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, the following reasons are provided:

## REASONS

### Introduction and background

1. This was a final hearing taking place via CVP on 12<sup>th</sup> May 2022.
2. By a claim form presented on 9<sup>th</sup> August 2020, the claimant brings a claim of disability discrimination against the respondent. He also indicates that he considers that he is owed notice pay, holiday pay and “other payments”. He alleges that the respondent terminated his employment on 30<sup>th</sup> March 2020 and that the reason it did so was “*because I could not go back to work because of my disability*”. He alleges that the redundancy process referred to by the respondent was a sham. The claimant states that he suffers from chronic obstructive pulmonary disease and asthma. The claimant does not have sufficient service to pursue a claim for unfair dismissal (the agreed dates of his employment being from 20<sup>th</sup> August 2019 until 30<sup>th</sup> March 2020).
3. In its response, the respondent does not admit that the claimant was disabled at the time of the alleged discriminatory treatment and further denies that it had knowledge of the claimant’s asserted disability. It denies that it unlawfully discriminated against the claimant. Its position is that the claimant was dismissed on grounds of redundancy, along with a number of colleagues as a result of the impact of the Covid-19 pandemic on its workload. It denies that any monies are owing to the claimant.

4. A preliminary hearing for case management purposes took place on 10<sup>th</sup> August 2021 before Employment Judge Robinson, at which the claimant was represented by Mr McGrady (friend of the claimant). It was identified that the essence of the claimant's case relates to why the claimant was dismissed on 30<sup>th</sup> March 2020.
5. The case was listed for a public preliminary hearing to determine whether or not the claimant was disabled within the meaning of section 6 of the Equality Act 2010 at the material time.
6. The claimant also suggested that he was owed notice pay and holiday pay but was unable to give details of those sums or how they were calculated. Employment Judge Robinson noted that, if the claimant's disability discrimination claim could not proceed because he was not deemed to be disabled, then these matters could be dealt with at a short final hearing.
7. A public preliminary hearing took place on 8<sup>th</sup> December 2021 before Employment Judge Whittaker, at which the claimant was again represented by Mr McGrady. The disability issue was determined and as recorded in a Judgment issued to the parties on 13<sup>th</sup> December 2021, the claimant was found not to be disabled during the material dates and his claims of disability discrimination were therefore dismissed.
8. Having determined this preliminary issue, Employment Judge Whittaker discussed with the parties what was meant by the claimant having ticked the ET1 boxes relating to holiday pay, notice pay and "other payments". As a result (and as recorded in the case management summary issued to the parties on 20<sup>th</sup> December 2021), it was confirmed very clearly by Mr McGrady that the claimant was not now pursuing any claim for "other payments".
9. In relation to the remaining claims for holiday pay and notice pay, a final hearing was listed for 1<sup>st</sup> March 2022 and case management orders were made by Employment Judge Whittaker. This included a requirement that the claimant further particularise the basis for these claims, as follows:-

*2(b) Having received those additional payslips then the claimant is required to calculate and set out in every relevant detail why the claimant says that he is still entitled to holiday pay, what the amounts due to the claimant are and how those amounts have been calculated. The claimant must do this in every detail that he would propose to present to the Employment Tribunal at the hearing on 1 March 2022. Every detail and calculation must be included and must be explained in easily understood language. Wherever possible reference should be made to the wage slips which will by then have been supplied by the respondent to the claimant.*

**(c) By 22 January 2022 the claimant must write to the Tribunal and to the respondent to set out the full details of the evidence which the claimant would present to the Tribunal on 1 March 2022 to say that he is entitled to notice pay and holiday pay.** *The claimant should acknowledge that the respondent is adamant that notice and holiday pay has been paid. If the*

*claimant still believes that notice/holiday pay is due then he should set out the amount which is claimed, how that is calculated and why, by reference to the relevant wage slips, the claimant still maintains that notice/holiday pay has not been paid to him.*

10. Employment Judge Whittaker further recorded that the only outstanding claims of the claimant were for unpaid notice and holiday pay.
11. By email dated 7<sup>th</sup> February 2022, Mr McGrady requested (on behalf of the claimant) that the claim be amended to include claims of (1) discrimination by association, (2) discrimination by perception, (3) victimisation and (4) harassment. He also requested that the hearing listed for 1<sup>st</sup> March 2022 be postponed pending an appeal against the outcome of the preliminary hearing on 8<sup>th</sup> December 2022.
12. By letter dated 17<sup>th</sup> February 2022, Employment Judge Slater informed the parties that the postponement application was refused and the application to amend was also refused, Employment Judge Slater setting out detailed reasons for this to the parties. A strike out warning was also issued to the claimant, given the failure to provide the information to the Tribunal and the respondent by 22<sup>nd</sup> January 2022, as ordered by Employment Judge Whittaker.
13. By email dated 24<sup>th</sup> February 2022, Mr McGrady submitted a response on behalf of the claimant, enclosing a schedule of loss. He also provided copies of the claimant's bank statements, payslips and his statement of particulars of employment.
14. The claimant's schedule of loss detailed his losses as follows:
  1. *The Claimant is entitled to loss of wages from 30<sup>th</sup> March 2020 to the 20<sup>th</sup> August 2020 when his temporary contract would have ended: £9,000 based on hours worked.*
  2. *Holidays accrued is 17.2, paid 13. Owed 4.2 - £351.70*
  3. *Weeks Notice or Redundancy Payment has not been made as alleged by the Respondent as no Redundancy was ever made.*
  4. *Pension payments as can be seen in payslips is incorrect and is still owed but we do not know what the Respondent payments are relating to as we have requested but not received.*
15. There were otherwise no further particulars of the claimant's claims for notice pay and holiday, despite Employment Judge Whittaker's clear case management orders in this regard.
16. The hearing on 1<sup>st</sup> March 2022 was postponed to 12<sup>th</sup> May 2022, due to technical issues with CVP.

#### **Procedure, documents and evidence heard**

17. Prior to this final hearing, the respondent had provided to the claimant a PDF bundle and a witness statement for Mr M Oldroyd, the respondent's Managing Director.

18. No witness statement had been provided on behalf of the claimant.
19. The bundle ran to 115 pages and included (in addition to various other documents) copies of the claimant's bank statement covering the period from 2<sup>nd</sup> September 2019 to 7<sup>th</sup> April 2020; the claimant's weekly payslips (the first being dated 22<sup>nd</sup> August 2019 and the last being dated 2<sup>nd</sup> April 2020); the claimant's schedule of loss; and the claimant's statement of particulars of employment.
20. I also had before me an email dated 12<sup>th</sup> May 2022, sent at midnight by Mr McGrady, referring to this hearing and requesting "*the opportunity to discuss with the court, ongoing discrimination/victimisation to the Claimant about recent issues that have occurred and other evidence that has come to light. Including, automatic unfair dismissal relating to pension not being paid as well as breach of contract*".

Decision to proceed in the claimant's absence

21. The claimant failed to attend this hearing. Mr McGrady also did not attend.
22. Attempts were made to contact the claimant and his representative by telephone, without success and I decided to proceed in the claimant's absence. for the reasons as set out to him in writing as follows:

*Firstly, the claimant should be aware that Employment Judge Peck proceeded with the hearing in the absence of the claimant and/or his representative. Rule 47 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, states that "If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence". At the outset of the hearing enquiries were made of the claimant, in circumstances where it was clear that the claimant was aware that the hearing was taking place (his representative having emailed the Tribunal and the respondent at 00:00 on 12 May 2022, referring to the 10am hearing on 12 May 2022). It was not, however, possible to reach the claimant and no explanation was received as to why he (or his representative) had failed to attend. No postponement application, or application for adjournment was made. Employment Judge Peck was satisfied that she could make findings of fact in respect of the issues to be determined (limited to the claimant's remaining claims for notice pay and holiday pay) on the papers alone, which included the further particulars provided on the claimant's behalf further to EJ Whittaker's case management order dated 15 December 2021.*

23. I was satisfied that proceeding in the claimant's absence would be in accordance with the overriding objective and that the claimant had been afforded an opportunity to set out the basis for his claim in detail (and as

instructed by Employment Judge Whittaker, in a form that would be as he would present to the Tribunal at a final hearing).

Amendment application

24. I also considered whether Mr McGrady's email of 12<sup>th</sup> May 2022 amounted to an amendment application and if so, whether it could be determined on the papers alone.
25. I considered that I had sufficient information to do so and decided to refuse the application to amend, for the reasons as also set out in writing as follows:

*Secondly, Employment Judge Peck considered the contents of the email sent at 00:00 on 12 May 2022, which looks to amount to an amendment application. This could be determined on the papers alone.*

*In deciding the application, Employment Judge Peck applied the principles in the case of Selkent Bus Company Limited v Moore [1996] ICR 836 as set out in EJ Slater's letter dated 17 February 2022. The application is refused.*

*This amendment application amounts to an even less particularised repetition of the amendment application already refused by EJ Slater (for the reasons set out in her letter to the parties dated 17 February 2022). The email of 12 May 2022 refers to "ongoing discrimination / victimisation to the Claimant about recent issues that have occurred and other evidence that has come to light. Including, automatic unfair dismissal relating to pension not being paid as well as breach of contract". It provides no further particulars whatsoever. No new evidence is referred to or detailed. It does not explain how new evidence has come to light and why this would give rise to a claim. It does not set out the protected characteristic relied upon (it having already been determined that the claimant does not satisfy the definition of a disabled person for the purposes of Equality Act 2010). Whilst the email alludes to new information having come to light, the application provides no clear reason why such information (whatever information that may be) had not been identified and raised at the previous private preliminary hearing for case management, at the public preliminary hearing to determine the disability issue, or as part of the claimant's 7 February 2022 amendment application. It also provides no explanation as to why it was not referred to when the claimant's further particulars of his notice pay and holiday pay claims were provided to the Tribunal and to the respondent.*

*If the amendment application is allowed, a claim in respect of which it has been identified that there are only two matters to be determined (whether or not the claimant was owed holiday pay and/or notice pay) will be considerably extended in scope. The particulars of these claims will need to be provided and responded to by the respondent. The issue of what protected characteristic is being relied upon will need to be considered, potentially requiring a further preliminary hearing. The respondent would have to deal with complaints not identified previously and would have to incur considerable time and expense defending additional claims, it having been identified on December 2021 (at the case management hearing) what claims it faced. If the application is not allowed, the claimant loses the opportunity to pursue complaints which are*

*insufficiently explained, are brought considerably out of time and the merits of which are far from clear.*

*In all the circumstances and taking into account the rule 2 overriding objective, Employment Judge Peck refused the amendment application.*

26. Having dealt with the amendment application, I proceeded to determine the remaining issues.
27. Miss Quigley took me through the relevant documents and during the hearing she made short oral submissions on behalf of the respondent.
28. Mr Oldroyd took the oath, and his witness statement was taken as read.

### **Claims and Issues**

29. In terms of the holiday pay claim, I noted that the claimant had indicated in his schedule of loss that he considered that he was owed 4.2 days' holiday. The respondent accepted that holiday pay was owing for 4.2 days. It calculated the value of this as £279.30 (with the claimant being paid £8.21 per hour, for 8.1 hours per day). By consent, I therefore ordered that the respondent pay to the claimant £279.30 gross in respect of accrued but untaken holiday owing on termination, disposing of the claimant's holiday pay claim in its entirety.
30. The issues to be determined in respect of the remaining claim for notice pay are therefore:
  - a. what was the claimant's notice period and was the claimant entitled to be paid for that notice period?
  - b. was the claimant paid for that notice period?

### **Findings of fact**

31. The claimant commenced employment with the respondent on 20<sup>th</sup> August 2019, working as a Laundry Assistant, under a 12-month fixed term contract.
32. The claimant was entitled to one week's notice, as specified in his statement of particulars. The respondent had the contractual right to pay in lieu of notice.
33. The claimant was paid weekly in arrears and was paid each Thursday for the work completed up to that day, which Mr Oldroyd confirmed in his evidence, and which is also apparent from the claimant's payslips. For example, on 19<sup>th</sup> March 2020, the claimant received one week's pay in arrears, being pay for the period from Wednesday 13<sup>th</sup> March to Thursday 19<sup>th</sup> March 2020.
34. The claimant was absent from work on Friday 20<sup>th</sup> March 2020, informing the respondent verbally that this was due to him self-isolating.
35. He was also absent the following week, being the week commencing 23<sup>rd</sup> March 2020.

36. The respondent did not consider the claimant to have any entitlement to pay for his absence during the week commencing 23<sup>rd</sup> March 2020, because he had failed to comply with the notification / certification requirements, having provided neither a sick note nor a shielding note. I am satisfied that this was the case and therefore find that the claimant was entitled to no pay from the respondent for the period from Friday 20<sup>th</sup> March 2020 until the termination of his employment on 30<sup>th</sup> March 2020.
37. It is not in dispute that the claimant's employment terminated on 30<sup>th</sup> March 2020. He was notified of this decision by letter dated 24<sup>th</sup> March 2020, although the claimant's case is that he did not learn of this until he was informed by way of a telephone call on 30<sup>th</sup> March 2020. Either way, he knew that his employment had been terminated by the respondent and it is not in dispute that his final day of employment was 30<sup>th</sup> March 2020.
38. To determine the issues in this case, I need not make a finding about why the claimant's employment terminated.
39. On 26<sup>th</sup> March 2020, a payment was made to the claimant for one week's pay and 3 days' holiday.
40. This payment was not for the period from 20<sup>th</sup> March 2020 – 26<sup>th</sup> March 2020, since the claimant was not entitled to pay for that period.
41. The evidence of Mr Oldroyd is that this payment was the claimant's notice pay and I am satisfied that it was. It equates to one week's pay and documentary evidence at the time (by way of the grievance outcome letter to the claimant dated 10<sup>th</sup> June 2019) is consistent in describing this payment as notice pay.
42. Further, there is no evidence before me to suggest that this payment was for anything other than notice.
43. Nor has the claimant at any stage set out why he considers that he has not received notice pay. His schedule of loss states only that he is claiming "*Weeks Notice or Redundancy Payment has not been made as alleged by the Respondent as no Redundancy was ever made*".
44. On 2<sup>nd</sup> April 2020, a further payment was made to the claimant. This payment was for the claimant's first week of work with the respondent in August 2019 (a payment "in hand"), which is a finding I make having considered the evidence of Mr Oldroyd, corroborated by the claimant's first payslip dated 22<sup>nd</sup> August 2019, which shows that he received nil pay on this date.

## The Law

45. At common law, every employee is entitled to notice of the termination of his or her contract of employment, regardless of how long he or she has worked for the employer. The only exception is where one side has broken a fundamental term of the employment contract, thereby repudiating it, in which case the other side has an option to terminate immediately.

46. The amount of notice that must be given by either party will normally be found in the express or implied terms of the contract. In addition, there are statutory notice rights (set out at section 86 of the Employment Rights Act 1996) that lay down minimum periods of notice for employees who have been continuously employed for one month or more and these minimum notice period displace any shorter contractual notice periods.
47. A failure to give proper notice will amount to a breach of contract, and in the case of failure by the employer, will give rise to a claim for damages for wrongful dismissal.
48. If the employee continues to work during his or her notice period, he or she is entitled to be paid in the normal way. Similarly, if the employer gives the employee notice but tells him or her not to come to work, the employee is still entitled to be paid the normal sums payable under the contract of employment.

### **Decision and Reasons**

What was the claimant's notice period and was the claimant entitled to be paid for that notice period?

49. It is not in dispute that the claimant's notice entitlement was one week. This was the minimum statutory notice period to which he was entitled, given his length of service, as reflected in his statement of employment particulars.
50. The claimant was therefore entitled to be paid for one week's notice on termination of employment, which could be paid in lieu.

Was the claimant paid for his notice period?

51. Yes. Given the findings of fact regarding payments made to the claimant, it is my decision that that the claimant was paid for his one week notice period.
52. The claimant's claim for breach of contract in respect of the alleged non-payment of notice pay therefore fails and is dismissed.

Employment Judge Peck  
12 July 2022



JUDGMENT SENT TO THE PARTIES ON  
28 July 2022

FOR THE TRIBUNAL OFFICE

Notes

1. Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.